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purchases held unconstitutional and void as depriving a citizen of the right to acquire property and unsustainable under the police power of the state. *State v. Ramsey* (1904), — N. H. —, 58 Atl. Rep. 958.

A number of interesting cases have lately arisen in regard to the constitutionality of statutes prohibiting the use of trading stamps and the courts are uniform in holding against the validity of such statutes. *State v. Dodge*, (1904) (Vt.) 56 Atl. Rep. 983; *Commonwealth v. Sisson* (1901), 178 Mass. 578; *State v. Shuggart* (1903), 138 Ala. 83; *City of Winston v. Beeson* (1904), — N. C. — 47 S. E. 457; *Ex parte McKenna* (1899) 126 Cal. 429. See also *Young v. Commonwealth* (1903), 101 Va. 853, reported and commented upon in 2 MICHIGAN LAW REVIEW 224, where a number of cases in point are cited.

CONTRACT—BREACH—DAMAGES.—Defendant by a written memorandum accepted an offer for a lease of a machine for \$450 cash, with the additional payment of \$225 semi-annual royalties, and agreed after the machine was installed to execute a lease in accordance with the conditions outlined in the memorandum; giving the defendant the privilege, on payment of the royalties due, of terminating the lease by returning the machine. While it was being installed, the defendant directed its removal and failed to execute the lease. Held, that he was liable, for breach of the contract in failing to execute the lease as agreed, or on the theory that the contract was executed and afterwards broken. *Warth v. Liebovitz* (1904), — N. Y. —, 71 N. E. Rep. 734.

Two modes of procedure were open to the plaintiff, he might have sued upon the contract, and for a breach of it, notwithstanding the defendant's failure to execute the license agreement (*Sanders v. Pottlitzer & Co.*, 144 N. Y. 209, 39 N. E. 75, 29 L. R. A. 431, 43 Am. St. Rep. 757), and recovered the cost of installing the machine and the royalty as it fell due. *McCready v. Lindenborn*, 172 N. Y. 400, 65 N. E. 208. Where, as in the case under discussion, the plaintiff claimed simply a breach of an agreement to enter into the contract a different remedy obtains. In such a case the value of the contract is the proper measure of relief to which the injured party is entitled. But in this case the defendant had reserved the right to return the machine and had actually returned it to the plaintiff. The express condition of the contract limited the liability of the defendant because, it limits the value of the contract to the other party. *Watson v. Russell*, 149 N. Y. 388, 44 N. E. 161. The only damages sustained by the plaintiff were the \$450 for installing the machine and the \$225 royalty for the first six months, which may be properly added to the value of the contract, because it was stipulated royalty for the period within which the contract was broken.

CORPORATION—NOTES GIVEN IN PAYMENT FOR ITS OWN STOCK—BANKRUPTCY—PROVABLE DEBTS.—Smith and Menefee, directors of a corporation, the S. P. Smith Lumber Company, owned substantially all the shares of capital stock. The corporation was barely solvent, being heavily in debt and many of its assets were of doubtful value. Menefee was anxious to dispose of his interest and threatened Smith with a receiver unless he should buy him out. Accordingly Menefee transferred to Smith 200 shares of capital stock and received as consideration two promissory notes aggregating \$9,050,

executed by the S. P. Smith Lumber Company and S. P. Smith; an order for \$5,000 drawn by Menefee on the lumber company, in favor of one Tomlinson and accepted by the company; the assumption of an accommodation note for \$2,950 by the company, and \$3,000 in cash paid by the company. The transaction caused its insolvency. Menefee seeks to have the promissory notes given in consideration for his shares proved as a claim against the bankrupt estate. *Held*, that a corporation has no power to purchase shares of its own stock when the transaction operates as a fraud on its creditors. *In re S. P. Smith Lumber Company* (1904), (District Court, N. D. Tex.) 132 Fed. Rep. 618.

While by the great weight of authority in the United States corporations have the power to purchase their own shares in the absence of statutory restriction, yet the purchase must be made in good faith and without prejudice or injury to creditors. *Shoemaker v. Washburn Lumber Company*, 97 Wis. 585, 73 N. W. Rep. 333; *First Nat'l Bank v. Salem Mills Co.*, 39 Fed. Rep. 89. The transaction must not be to the injury of the shareholders. *Price v. Pine Mountain Iron and Coal Co.* (Ky.), 32 S. W. Rep. 267; *I WILGUS CORP. CAS.* 1047. A few courts hold that corporations have no such power. *Coppin v. Greenlees and Ransom Co.*, 38 Ohio St. Rep. 275, 43 Am. Rep. 425; *Herring v. Ruskin Co-Op. Ass'n.* (Tenn.), 52 S. W. Rep. 327. In *Hall v. Henderson*, 126 Ala. 449, the facts were very similar to those in the case at hand and the purchase was likewise held invalid. See also *Hamor v. Taylor, etc. Co.*, 84 Fed. Rep. 392.

DAMAGES—MEASURE—CONTRIBUTION.—Action by an artist to recover damages for being wrongfully deprived of two sculptured busts shipped from Germany, and sold by the United States Government for custom duty. One Mosle paid the freight charges from Germany to the United States, and gave notice at the sale of his claim. Ladd, one of the defendants, became purchaser of the busts. The plaintiff alleges that Ladd and Mosle, the defendants, entered into a conspiracy to suppress competition at the sale, and set up a separate cause of action against Mosle, alleging that he, as agent, had agreed to bid in the property for the plaintiff and failed to do so. *Held*, that \$1,226 was excessive damages. *Ladd et al. v. Ney* (1904) — Tex. Civ. App. —, 81 S. W. Rep. 1007.

The only theory on which the plaintiff could recover against both defendants was the alleged conspiracy between them, and if Mosle was a tortfeasor, he was not entitled to contribution. He contended that this case falls within an exception to the general rule as announced in *City of San Antonio v. Smith*, 94 Tex. 271, 59 S. W. 1109. The rule referred to would preclude the demand asserted by Mosle against his codefendant, because he is liable for the damages which he caused by his misconduct. *Ehrgott v. New York*, 96 N. Y. 264, 281. In the principal case the busts had no market value, and there was no evidence of the cost of their production except as testified by the plaintiff. There was no use contemplated other than delivering them to the parties for whom they were made. In such a case the value is to be properly fixed by considerations of cost and actual worth at the time of